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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re S.F., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

S.F.,

Defendant and Appellant.

D061011

(Super. Ct. No. J227-502)

APPEAL from an order of the Superior Court of San Diego County, Carlos O.
Armour, Judge. Affirmed.

On November 8, 2010, S.F. (Minor) admitted she committed robbery in violation
of Penal Code section 211. She was placed on home supervision.

On December 1, 2010, Minor was declared a ward of the court and placed on
home supervision.

In April 2011, Minor admitted violating the terms of her probation and she was committed to Breaking Cycles for a period not to exceed 150 days.

In June 2011, Minor again admitted violating her probation and the commitment to Breaking Cycles was extended for 90 days.

The juvenile court conducted an annual review of Minor's status in December 2011. At that time the court concluded Minor had successfully completed probation and terminated jurisdiction. Defense counsel requested the court to reduce Minor's conviction from robbery to grand theft from the person (Pen. Code, § 487, subd. (c)). The court denied the request.

Minor appeals contending the trial court erred in failing to understand the nature of its discretionary authority and that it abused its discretion in denying Minor's requested reduction of her offense. We find no error by the trial court and therefore affirm the order.

STATEMENT OF FACTS

Although Minor does not challenge the true finding on her robbery offense, we will set forth a statement of facts to provide context for our review of the trial court's exercise of discretion. We will adopt the statement of facts set forth in the Appellant's opening brief as an accurate summary of the events leading to the true finding.

A. The Incident

S.F. had met Reggie, a young Marine, on MySpace, said she was 19,¹ and agreed to meet with him. They met at a CVS. On September 24, 2010, at approximately 11:20 p.m., S.F. again met up with Reggie and his friend, Alberto. Telling the young men that her sister wanted to hang out with them, S.F. directed them to a house at 562 Gold Drive, in the city of Oceanside. When they arrived at the house, S.F. went inside. As Reggie and Alberto waited outside, two individuals came out of the house wearing bandanas over their faces. Jordan Z. approached Reggie, and pointing at him what appeared to be a single barrel pump action shotgun, took \$40 and two black Motorola cell phones from him. Adrian T., armed with a machete, approached Alberto and demanded money from him. Alberto was unable to provide anything of value. Adrian told Alberto to be quiet and not to call the police. Both Jordan and Adrian are members of the Deep Valley Blood street gang. As Alberto and Reggie drove off from the location, they received about nine telephone calls from S.F., who advised them that she was only 16 years of age, and said if they reported the robbery to the police, she would claim that they had raped her. At approximately 11:50 p.m., Oceanside police officers contacted S.F., Jordan and Adrian. Jordan was subsequently arrested for being a parolee at large. Officers informed S.F. and Adrian that they were in violation of curfew. Officers recovered two Motorola cell phones. On September 25, 2010, from one of the cell phones, officers dialed a phone number that appeared on one of the cell phones, and

¹ S.F. was 15 at the time.

contacted Reggie, who agreed to speak with them. During the interview, Alberto positively identified Adrian as the individual with the machete and Jordan as the individual with the shotgun. Reggie positively identified S.F. as the female who lured them both to the residence. At approximately 10:00 p.m. that night, officers executed a search warrant at 562 Gold Drive, and arrested Adrian. During the search of the residence, officers located a large machete, a black single barreled pump action toy shotgun that was manipulated to resemble a real firearm, and clothing matching the descriptions provided by Reggie and Alberto. Police arrested Adrian and transported him to juvenile hall. On September 30, 2010, officers contacted and arrested S.F. at her school. She confirmed her phone number – which was the same number from which she called Reggie and Alberto on the night of the incident. S.F.'s cell phone contained evidence that a call had been made to Alberto's phone. Police later transported S.F. to juvenile hall.²

DISCUSSION

At the final review hearing in December 2011, the juvenile court declared its intention to terminate jurisdiction. Defense counsel requested the court to set aside the robbery true finding and enter a new true finding on grand theft from the person. The court responded: "All right. I think the court is able to dismiss petitions. I think the court is able to reduce reduceable felonies to a misdemeanor. I don't think the court can re-

² Most of the facts were taken from the probation report.

enter an admission unless it was an agreement by the parties initially that would be done."

The prosecutor responded there had not been any agreement to "reduce" the offense and the prosecution opposed any such reduction.

The court then ruled: "That being the case--and even if I did have the authority, I think that in this particular case, I would deny it. It was a serious offense. I know that she has come a long way since then, but it's still difficult to overlook what happened in this case initially."

Relying on Welfare and Institutions Code³ section 782, Minor contends the trial court failed to understand the scope of its discretion and to the extent the court did exercise its discretion it did so inappropriately. Minor is mistaken in her reliance on section 782 and in her characterization of the court's understanding of its discretion. In any event we are satisfied the court was well within its discretion to deny Minor's request to change the nature of the true finding.

A. Legal Principles

Section 782 provides:

"A judge of the juvenile court in which a petition was filed, at any time before the minor reaches the age of 21 years, may dismiss the petition or may set aside the findings and dismiss the petition if the court finds that the interests of justice and the welfare of the minor require such dismissal, or if it finds that the minor is not in need of treatment or rehabilitation. The court shall have jurisdiction to order such dismissal or setting aside of the findings and dismissal

³ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

regardless of whether the minor is, at the time of such order, a ward or dependent child of the court."

That section provides authority for juvenile courts to dismiss a petition or set aside findings. It does not provide any authority to substitute a true finding for a different, uncharged offense. The trial court here was plainly aware of the authority granted by section 782 in acknowledging it had the authority to dismiss a petition.

The juvenile court certainly has the power to dismiss a petition. (*V.C. v. Superior Court* (2009) 173 Cal.App.4th 1455; *In re Kenneth H.* (2000) 80 Cal.App.4th 143, 149.)

The power to grant a dismissal is, however, different from the power to substitute charges.

The parties have not submitted any authority for the proposition that a juvenile court can not only set aside a true finding, but that it can, over the prosecution objection order a true finding on an uncharged offense where there has been no agreement of the parties to make such a substitution of offenses. Minor has not cited any authority on this issue and the Attorney General has ignored the issue. Our independent research has not disclosed any authority that a juvenile court may substitute a different offense for that which has been admitted or on which there has been a true finding.

Where a court exercises its discretion with regard to dismissal or reduction of the level of an offense we review that decision under the abuse of discretion standard. Under that standard we will only set aside a trial court's decision where the record on appeal clearly establishes an abuse of the court's discretion. (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977; *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124.)

B. Analysis

As we have noted Minor did not request that the court dismiss the petition or any true finding. Rather, defense counsel requested that the court set aside the robbery true finding and substitute a true finding for grand theft from the person in its place. Clearly there is no authority for such action in section 782. The court acknowledged its power to dismiss the petition and to reduce felonies to misdemeanors, thus demonstrating it understood the grant of authority under section 782. Accordingly, there is no merit to Minor's claim the court did not understand the scope of its authority.

The court did make clear that even if it had the power to substitute charges, it would decline to do so. As the court correctly noted, the underlying crime was serious. Two young Marines were lured by Minor into a situation where her gang member cohorts could commit robbery. The accomplices used a machete and what appeared to be a shotgun to carry out the robbery. Later, Minor called the victims to threaten them that if they called police she would tell police the victims had raped her and that she was under 16 years old.

The record also shows that Minor's performance on probation was not stellar. Her probation was revoked twice and she was committed to Breaking Cycles and then had the commitment extended. Fortunately, it appears Minor was able to make progress after the probation revocations and the trial court saw fit to terminate jurisdiction in recognition of Minor's progress. On this record, however, we cannot say the trial court abused its broad discretion by declining to "reduce" the offense, even if the court had the power to do so. Thus, we find no abuse of discretion.

DISPOSITION

The juvenile court's order denying Minor's request to reduce the offense for which a true finding had been made is affirmed.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

HALLER, J.